

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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KEVIN GILL, SIERRA WHITLEY
Plaintiffs,

Case #: 15CV5513(ARR)(LB)

COMPLAINT

- Against -

JURY DEMAND

THE CITY OF NEW YORK and POM LESLY
LAFONTANT, SGT FRANK PANDULLO
POM GESLY JEAN, SGT VERDERBER, POM ROBERTO
ANTON, POM MOHAMMAD MIZRA, POM JASON
JACKSON, DT GEORGE KRANT, LT VEGA, SGT PERRINO
(All officers who responded to and/or Supervised a warrantless
search of Plaintiffs' home on 6/21/2014),
SGT OSCAR NUNEZ,
(Who responded to incidents on 8/13/2014 & 8/14/2014), POF
CRYSTAL HORNE, LT JOHN HOPKINS, POM LAURANCE
LAVERTY, SGT STEPHE RINALDI, POM RAMOS, POM
FRITZ DUVAL, POM ARIEL ANGLIN
(who were involved in arrest of plaintiff on 8/15/2014)

Defendants.

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Plaintiffs, KEVIN GILL, SIERRA WHITLEY by Pro Se complaining of the
defendants herein, THE CITY OF NEW YORK, and POM LESLY
LAFONTANT, SGT FRANK PANDULLO POM GESLY JEAN,
SGT VERDERBER, POM ROBERTO ANTON, POM MOHAMMAD
MIZRA, POM JASON JACKSON, DT GEORGE KRANT, LT VEGA,
SGT PERRINO, SGT OSCAR NUNEZ, POF CRYSTAL HORNE,
LT JOHN HOPKINS, POM LAURANCE LAVERTY, SGT STEPHE
RINALDI, POM RAMOS, POM FRITZ DUVAL, POM ARIEL ANGLIN
(collectively, "Defendants"), respectfully allege as follows:

NATURE OF THE ACTION

1. This is an action at law to redress the deprivation of rights secured to the plaintiffs under color of statute, ordinance, regulation, custom,

and/or to redress the deprivation of rights, privileges, and immunities secured to the plaintiffs by the Fourth and Fourteenth Amendments in the United States Constitution of the United States, and by Title 42 U.S.C. § 1983 [and § 1985], {and arising under the law and statutes of the City and State of New York}.

JURISDICTION

2. The jurisdiction of this Court is invoked pursuant to 42 U.S.C. § 1983, 28 U.S.C. § 1343, 28 U.S.C. § 1331 and 28 U.S.C. § 1367, and under the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution.
3. As the deprivation of rights complained of herein occurred within the Eastern District of New York, venue is proper in this district pursuant to 28 U.S.C. § 1391 (b) and (c).

THE PARTIES

4. Plaintiffs are and were at all times material herein residents of the United States and The State of New York.
5. At all relevant times, individual defendants (hereinafter "defendant officers") were upon information and belief, and still are, agents and/or officers employed by defendant The City of New York.
6. At all times herein, the defendant officers were acting under their official capacity, and their acts were/are performed under color of the statutes and ordinances of the City of New York, and/or the State of New York. Defendant officers were/are the servants, agents, and employees of their co-defendant, the City of New York, such that their acts are imputed to the City of New York.
7. At all relevant times, the defendant - The City of New York was and is a municipal corporation duly organized and existing under the laws of The State of New York, and was/is the employer of the defendant officers, and the actions of the defendant officers complained of herein were done as part of the custom, practice, usage, regulation, and/or at the direction of the defendant, The City of New York.
8. Plaintiffs are suing the defendant officers in their individual and official capacities.

FACTUAL ALLEGATIONS

COMMON TO ALL CAUSES OF ACTION

9. On June 21, 2014, approximately 7: 45 pm - according to eye witnesses and documents disclosed by City Counsel, officers of the 73rd Precinct and Emergency Services Unit of 1000 Sutter Av. in Kings County - did forcibly break into and

search plaintiffs' home - damaging the doors, door frames, windows and structure of plaintiffs home - without probable cause and without warrant; breaching and violating plaintiffs' Fourth and Fourteenth Amendment rights. Notwithstanding, Plaintiffs' Gill and Whitley also alleged there was a willful attempt to "cover up" the property damage done to plaintiffs' home- therefore entitling them to compensatory and punitive damages. (Please refer to Exhibits, Pictures, and Affidavits)

10. According to a criminal complaint and arrest reports, defendants involved did arrest one Barry Langston on June 21, 2014 7:30 p.m. for petty larceny. According to confidential and sworn witnesses who work/hang out at the Auto Shop located at (which is adjacent to plaintiffs property), police officers searched plaintiffs' property to look for a gold chain. After an unsuccessful search of plaintiffs backyard, "Emergency Services Squad" (defendants' POM Jason Jackson and Dt. George Kant) was called. Subsequently plaintiffs' front doors were forcibly opened and ripped apart. This warrantless search was Supervised by LT. Vega, SGT. Frank Pandullo, and SGT. Vanderber of the 73rd precinct. Other witnesses, including Dale Ellison of 1939 Park pl. Brooklyn - have emphatically told Plaintiff Gill "they were on your roof with machines guns." Dale Ellison can be reached at (347) 742-6666.

11. Plaintiff Whitley, returning home from an errand, did witness Police officers (including higher ranking officers) in and around the entrance doors of 1519 East New York Av. Plaintiff Whitley did not walk up to her residence for fear of being implicated in criminal activity. Instead, she walked away from the scene.

12. On June 22, 2014 after being told by a clerk at the local laundromat (Harry Brown) that "I heard police ran into your house."

Plaintiff Kevin Gill, did visit 73rd Precinct to inquire about the "Break In " and was told by two male negro officers that "Somebody you know probably did it."

13. Plaintiff Gill was not advised of any remedies or actions to take on his own behalf or on behalf of other individuals whose privacy was violated.

14. On July 4, 2014, Plaintiff did call 73rd Precinct in effort to make a formal complaint. Officer Mizra and Officer Anton were dispatched to 1519 East New York Ave. PH, Brooklyn NY

11212. Officers Mizra and Anton both refused to make a report of the complained incident claiming : "You are a squatter... " and "You don't have any right to honor."

15. On July 5, 2014 this denial of due process was reported to I.G. via 311. A complaint number : 2014 - 23 - 241 was obtained.

16. Also, on July 5, 2014, officers again were dispatched to 1519 East New York Ave. Brooklyn, NY 11212 to make a formal report. Up to this present date, no report has been made or filed and no one can offer additional information or details or produce legal proof of any legal warrant or instrument signed by an appropriate Judicial authority.

17. That each and every officer and/or individuals who responded to, had any involvement and/or was present at the location of the unlawful entry/search, knew and was fully aware that the search was illegal and unwarranted.

18. As a result of the incident by defendant officers, plaintiffs suffered and continue to suffer physical and emotional distress, fear, embarrassment, humiliation, insecurity, loss of use of properties, displacement, discomfort, loss of consortium, financial losses, pain and defamation.

19. Additionally, defendants' destruction of plaintiffs property caused the loss of use of both the residential and commercial parts of the property. As a result of the violation, Plaintiffs have suffered displacement and loss of wages while enduring physical overexertion and stress due to the unsecured state of their property.

20. Plaintiff Gill is infirmed (SSD pending) from being struck by a City Bus in June of 2013, and has been unable to secure the income or capital needed to repair/replace his door frame, doors, steel gate, door jambs, windows, and safety bars. The time and exertion spent "checking up" on his property; securing and resecuring barriers to prevent intruders and vandals - has caused his physical ailments and stress to compound. For safety, plaintiffs' have moved their primary effects to a different residence. Nevertheless, 1519 E. New York av. PH has been broken into several times by vandals and/or squatters and property stalkers - since February 2015. Plaintiffs' have also been locked out of their home other occasions - all occurrences during and after February of 2015.

21. On 8 / 13 / 2014 approximately 2:20 p.m. near 40 Glenmore Ave.

(Watkins St.) and the Brooklyn Public Library, JOHN DOES' #1-4 in unmarked car bearing the license plate #DUC7183 did stop plaintiff - who was walking Sierra Whitley - and did demand he give them identification. (Refer to Affidavit)

22. Plaintiff asked officers JOHN DOES' #1-4 "Why I have to give you my ID?" which prompted JOHN DOE to answer "Because I said so." Plaintiff who feared for his life, reached into his pocket and gave identification to the driver.

23. Defendant then asked plaintiff about the dbx cable he had in his shopping cart.

24. Plaintiff stated that the items he had was from his basement and he was on his way to the recycler.

25. Defendant officers then told plaintiff that he could not leave until they found out via radio from the "base" if he had a warrant, and that if he had no warrant he would be set free.

26. After over several minutes passed, JOHN DOE'S #1-2 did exit unmarked vehicle bearing license plate #DUC7183 and proceeded to search plaintiff by lifting up his shirt. He was also asked if he had any weapons to which plaintiff responded "no".

27. Defendant officers #1-4 then told plaintiff that other officers were coming to take him to his address so he (plaintiff) could prove he lives there.

28. After more than several minutes uniformed officer(s) SGT. NUNEZ and JOHN DOES #1-6 arrived. A conversation was held between Plain clothed JOHN DOES #1-4 and uniformed officers SGT. NUNEZ and JOHN DOES #1-6.

29.

30. Several minutes later Plaintiff Gill was told that he may leave. Investigative reports by CCRB as well as records disclosed by City Counsel confirm the presence of at least 3 "Anti-Crime" officers from BK NORTH NARC unit were working in the area. Records also confirm the vehicle was used that day. At this time the names of the 4 narcs' have not been specified. Nevertheless, witnesses to the ordeal include Tobi Thomas, employee of the Brooklyn Public Library and Renay Donaldson, tenant of 1590 East New York av #3b.

31. That each and every officer and/or individual who responded to, had any involvement and/or was present at the location of the unlawful stop

detainment and search knew and was fully aware that the plaintiff did not commit any crime or offense.

32. As a result of the incident by defendant officers, plaintiff suffered and continues to suffer emotional distress, fear, embarrassment, humiliation, displacement, discomfort, loss of consortium, financial losses, pain, and defamation.
33. On 8/14/2014, approximately 7:30 am., plaintiff Gill - while doing his laundry at "Clean Rite" located on 1199 Eastern Parkway, saw Elaine Williams walk out the laundromat with his bag - which contained a "HTC One" smart phone, Nikon battery charger and battery. Gill recognized Williams as a homeless person who sometimes loitered in the laundromat. (Refer to Affidavit)
34. Plaintiff Gill gathered his clothes, went home and told Sierra Whitley. The two went out to look for Elaine Williams.
35. At around 11:30 am. Plaintiff Gill confronted Elaine Williams on Watkins and Stone av. and Gill told 2 female officers that Williams had stole his bag a few hours ago. Moments later after Williams was in hand cuffs - LT. Oscar Nunez came on the scene and told the 2 female officers to release Elaine Williams.
36. Sgt. Nunez - in a belligerent manner - told Gill "you lied about your address yesterday." Stunned and bewildered Gill then asked the officer "what you talking about?". Officer Nunez then stated. "yesterday, we let you go yesterday, you lied about your address!" Gill, who didn't recognize Sgt. Nunez Said "my address is on I.D. card". Sgt Nunez then told Gill that he could not even make a "criminal complaint" because "you have no rights, go.." he then boasted that he was "Lieutenant Nunez!"
37. On Friday 08 / 15 / 2014 approximately 12 noon at Atlantic Ave. and Gunther Pl. defendants LT. John Hopkins and POM Laurance Lavery of the 67th precinct , along with POM Crystal Horne of the 73rd precinct - driving east along Atlantic av - in an unmarked black or dark blue vehicle approached Plaintiff Gill and demanded him to produce "Identification."
38. At No time was plaintiff allowed to leave or to continue about his course of business.
39. Plaintiff Gill asked the driver "why you need I.d. from me?" The driving replied "I heard you got young kids out here selling water." Disgusted with the implication, Plaintiff Gill spat back " I aint got no kids working for me; that's conspiracy!" The driving officer then told Gill that he was "obstructing traffic" and "selling water without a license" Plaintiff Gill responded "i have the right to sell my property just like soccer moms sell water and cookies."

40. When Gill could not produce "Identification" the two male officers searched and seized him - leaving his property (cooler & bag) on the sidewalk.
41. During transport to 73rd precinct Defendant Horne told defendants Hopkins and Laverty "lets get the guy selling water on Lavonia" to which the driver replied "we'll get him another time, its no room."
42. At the 73rd precinct, Plaintiff Gill was forcibly 'fingerprinted" by POM Ramos. Defendant Ramos told Gill he was being arrested because he had "warrant". Gill replied "you don't have a warrant to arrest me" ... "that's to appear in court for a violation, not a crime."
43. Defendant Ramos then told Gill he could get a vendors permit on Pennsylvania and Liberty - in order to sell his property. Gill told defendant Ramos "ya'll just profiling me because Im native American" This warrantless arrest was approved by SGT. Stephe Ranaldi.
44. Several hours later, Gill was transported to "Central Booking" (and "processed") by Defendants POM Fritz Duval and POM Ariel Anglin.
45. That each and every officer and/or individual who responded to, had any involvement and/or was present at the present location of the unlawful stop, detainment, search, arrest and process, knew and was fully aware that the plaintiff did not commit any crime or offense.
46. As a result of the incident by defendant officers, plaintiff suffered and continues to suffer emotional distress, fear, embarrassment, humiliation, displacement, discomfort, loss of consortium, financial losses, pain, strain, and defamation.
47. The actions of the defendants, acting under the color of the State Law, deprived plaintiff of rights to due process and rights, remedies, privileges, and immunities under the laws of the Constitution of the United States, treaties, ordinances, customary International laws and norms, custom and usage of a right; in particular, the right to be secure in and with their own person, and to be free from abuse of process.
48. Plaintiff has been the victim of several other attacks and violations by officers of the 73rd Precinct.
49. The actions of the defendants, acting under color of State law, deprived plaintiffs of their due process rights, and rights, remedies, privileges, and immunities under the laws of the Constitution of the United States, treaties, ordinances, customary international law and

norms, custom and usage of a right; in particular, the right to be secure in their own person and property, to be free from abuse of process and the right to due process.

50. Plaintiffs' have been the victim of several other attacks and violations by officers the 73rd Precinct.

FIRST CAUSE OF ACTION : 42 U.S.C. 1983

51. By this reference, plaintiffs incorporation each and every allegation and averment set forth in paragraphs 1 - 50 of this complaint as though fully set forth herein.

52. The conduct of defendant officers, as described herein, amounted to loss of use false arrest, unlawful entry, excessive use of force, malicious abuse of process, failure to intervene, unlawful stop and frisk, unreasonable detention, unreasonable search and seizure, racial profiling, abuse of authority, unlawful taking of private property, pattern of harassment, conspiracy, discrimination, Selective enforcement, fabrications of evidences, denial of equal protection of the laws, denial of right to a fair trial, denial of due process rights and malicious prosecutions.

53. Such conduct described herein violated plaintiffs' rights under 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments to the United States Constitution.

54. Consequently, plaintiffs have been damaged and hereby deemed compensatory and punitive damages in an amount to be prove at trial against each of the defendants. individually and severally.

**SECOND CAUSE OF ACTION : FAILURE TO
TRAIN / SUPERVISE / DISCIPLINE AND**

MUNICIPAL POLICY - against defendant The City Of New York -

55. By this reference, plaintiffs incorporate each and every allegation and averment set forth in paragraphs 1 - 54 of this complaint as though fully set forth herein.

56. Defendant City of New York, acting through the New York Police Department, had actual and/or de facto polices, practices, custom and/or usages of failing to properly train supervise or discipline its police officers concerning correct practices in conducting investigations, the use of force, lawful search of individuals and/or their properties, has failed to promulgate, put into effect and monitor the enforcement of appropriate rules to ensure warrantless searches of people and/or their places, materials, papers and effects are not engaged.

57. Further, the existence of the aforesaid unconstitutional policies,

practices, customs and/or usages may be inferred from repeated occurrences of similar wrongful conduct.

58. Upon information and belief, many of the named individual defendants have a lengthy substantiated history of police misconduct, fraud and dishonesty. further, many of the named individual defendants are named defendants in numerous lawsuits in this district and in the Southern District of New York alleging similar as those alleged herein-- many of which lawsuits have been settled by defendant City of New York with said defendant making substantial monetary payments to the plaintiffs in the said lawsuits.

59. In addition to the named individual defendants, several officers of the NYPD assigned to the 73rd Precinct as the named individual defendants routinely perform warrantless searches and make unlawful arrests charging innocent persons with various crimes and/or offenses.

60. Most of the arrests and charges made by officers assigned to the NYPD 73rd Precinct are usually voided and/or dismissed by prosecutors for lack of evidence.

61. Defendant, The City Of New York, has settled numerous of lawsuits brought in this district against several officers assigned to the NYPD 73rd Precinct concerning similar behavior as described herein.

62. Defendant, The City Of New York maintained the above described policies, practices, customs or usages knowing fully well that the policies, practices, customs and/or usages lead to improper conduct by its police officers and employees. In failing to take any corrective actions, defendant The City Of New York acted with deliberate indifference, and its failure was a direct and proximate cause of plaintiffs injuries as described herein.

63. The actions of defendants, acting under color of State law, deprived plaintiffs of their due process rights, and rights, remedies, privileges, and immunities under the laws and Constitution of the United States, treaties, ordinances, customary international law and norms, custom and usage of a right; in particular, the right to be secure in their person and property, the right to be free from abuse of process, the excessive use of force, and the right to due process.

64. By these actions, defendants have deprived plaintiffs of rights

secured by treatise, ordinances, customary international law and norms, custom and usage of a right, and the Fourth and Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. § 1983.

THIRD CAUSE OF ACTION : 42 U.S.C. § 1985

65. By this reference, plaintiffs incorporate each and every allegation and averment set forth in paragraphs 1 - 64 of this complaint as though fully set forth herein.
66. In an effort to cover up the lawless activity of property damage and violations of plaintiffs due process, defendant officers conspired among themselves and conspired with other individuals to deprive plaintiffs of their constitutional rights secured by 42 U.S.C. § 1983, and by the Fourth and Fourteenth amendments in the United States Constitution, because of their perceived social status, race, ancestry and/or ethnicity, and took numerous overt steps in furtherance of such conspiracy, as set forth above.
67. In light of the foregoing therefore, defendant officers engaged in a conspiracy designed to deprive plaintiffs of their constitutional and federal rights in violation of 42 U.S.C. § 1985.
68. As a direct and proximate result of the misconduct and abuse of authority detailed above, plaintiffs sustained the damages herein before stated.

FOURTH CAUSE OF ACTION : NEW YORK

STATE CONSTITUTION, Article I, § 6, 11 and 12

69. By this reference, plaintiffs incorporate each and every allegation and averment set forth in paragraphs 1 - 68 of this complaint as though fully set forth herein. By reason of the foregoing, and by breaking into plaintiffs home without probable cause or reasonable suspicion and refusal to document by report, depriving plaintiffs of due process and equal protection of laws, defendants deprived plaintiffs of rights, remedies, privileges, and immunities, guaranteed to every New Yorker by Article I § 6 (providing for due process), Article I § 11 (prohibiting discrimination in Civil Rights and providing for equal protection of laws), & Article I § 12 (prohibiting unreasonable search & seizures) of the New York Constitution.
70. In addition, defendant officers conspired among themselves and conspired with other individuals to deprive the plaintiffs of the constitutional rights secured by Article I, §§ 6, 11 & 12 of the

New York Constitution and even took numerous overt steps in furtherance of such conspiracy as set forth above.

71. Defendant officers acted under pretense and color of State law and in their individual and official capacities and within the scope of their respective employments as officers, agents, or employees'. Defendant officers' acts beyond the scope of their jurisdiction without the authority of law and in abuse of their powers. Defendant officers acted willfully, knowingly, and with the specific intent to deprive the plaintiffs of their constitutional rights in Article I §§ 6 , 11 & 12 of The New York Constitution .
72. Defendant officers, agents, servants, and the employees were responsible for the deprivation of plaintiffs' State Constitutional Rights.

FIFTH CAUSE OF ACTION :
UNCONSTITUTIONAL

LOITERING ARRESTS - and - Other New York Torts

73. By this reference, plaintiffs incorporate each and every allegation and averment set forth in paragraphs 1 - 72 of this complaint as though fully set forth herein.
74. Plaintiffs now asks their Honorable Judge and jury to consider punitive damages due to willful negligence's.
75. fundamental to the U.S. Constitution is the right to Autonomous life and liberty. Freedoms which include selling or trading ones property, or asking for help. Indeed to deny one these liberties is to deny her/him the right to live.
76. Harassing and/or arresting Plaintiff Gill because he asked someone to put him on the subway, sells metal or beverages, has been deemed unconstitutional by the "Judiciary" on behalf of the People.
77. In recent years this issue has been revisited via the "NYC LOITERING LAWSUIT SETTLEMENT" - which plaintiff Gill was a claimant (Class A)
78. Indeed, the bench warrant that Gill was processed and sentenced to Rikers Island for on 8/15/14 involved an incident where Gill committed no offense (Nov-2012). He merely asked to put him on the train and was attacked, seized, searched and arrested - by one Officer Joseph of Transit (32 precinct) for 'resisting arrest'.
79. The conduct of the defendants', as described herein, amounted to trespass, unreasonable search, unlawful stop, special injury,

loss of consortium, defamation, fraud, harassment, negligence and intentional infliction of emotional distress, displacement, loss of use and negligent hiring and retention of defendant officers.

80. The constant pressure on police officers to disenfranchise persons deemed to be indigenous Americans, native Americans, colored, or African-American and the associated environmental stress has disabled the Plaintiffs.
81. Consequently, plaintiffs have been damaged and hereby demand compensatory and punitive damages in an amount to be proven at trial against each of the defendants individually and severally.

WHEREFORE, plaintiffs respectfully pray judgement as follows :

- a. For compensatory damages against all defendants in an amount to be proven at trial ;
- b. For exemplary and punitive damages against all defendants in an amount to be proven at trial ;
- c. For all costs of Plaintiffs theoretical time spent, preparation and execution of Complaint (this includes but is not limited to costs of copies, notarized affidavits, certified mail, ink, paper, etc.)
- d. For such other and further relief that this court deems proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 (b) of the Federal Rules of Civil Procedure, plaintiffs demand a trial by jury.

I declare under penalty of perjury that the above/foregoing is true and correct.

Signed this 4th day of JUNE, 20 16.

Signature of Plaintiff (s) :

Kevin Gill (K.G.)
Sara Whitley

Mailing Address :

[REDACTED]

Telephone Number (s) :

[REDACTED]

NOTARY